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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,835	12/17/2003	David Bingham	10030750-1	5422

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EXAMINER	
EHNE, CHARLES	
ART UNIT	**PAPER NUMBER**
2113	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/736,835	BINGHAM, DAVID	
	Examiner	Art Unit	
	Charles Ehne	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 10-21* is/are rejected.

7)☒ Claim(s) *9* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7,9-12 and 15-21 are rejected under 35 U.S.C. 102(e) as being unpatentable by Boudnik (2003/0115252).

As to claim 1, Boudnik discloses an apparatus, comprising:

an agent (Page 4, ¶ 0038, lines 1-3); and

a first test session servlet running on the agent, receiving a test description in a predetermined format from a caller, the test description including at least one predefined subtest, dynamic data, and predefined test parameters, threading a first test session that invokes the agent to run the at least one subtest, receiving subtest results from the first test session, and sending the subtest results from the at least one subtest and the dynamic data back to the caller (Page 1, ¶ 0012, lines 4-10 & Page 3, ¶ 0031 & Page 9, ¶ 0087, lines 5-10).

As to claim 2, Boudnik discloses the apparatus according to claim 1, wherein:

the at least one subtest comprises at least first and second subtests, and the second subtest is defined to run on a second test session (Page 6, ¶ 0064, lines 6-8); and

the second subtest sends a second subtest description, including test parameters for the second subtest and the dynamic data, to the second test session, to run the second subtest, and receives second subtest results and the dynamic data (Page 8, ¶ 0081, lines 6-8 & Page 8, ¶ 0085, lines 10-15).

As to claim 3, Boudnik discloses the apparatus according to claim 2, wherein the second subtest:

invokes a second test session servlet running on a second agent to thread the second test session, sends the second subtest description to the second test session servlet, the second test session invoking the second agent to run the second subtest, and receives second subtest results and the dynamic data from the second test session servlet (Page 8, ¶ 0081, lines 6-8 & Page 8, ¶ 0085, lines 10-15).

As to claim 4, Boudnik discloses the apparatus according to claim 3, wherein:

each test session servlet threads multiple test sessions that run in parallel (Page 3, ¶ 0034, lines 8-13).

As to claim 5, Boudnik discloses an apparatus comprising:

a first agent (Page 4, ¶ 0038, lines 1-3); and

a first test session servlet running on the first agent, receiving a test description in a predetermined format from a caller, the test description including at least two subtests, dynamic data, and predefined test parameters, threading a first test session

that invokes the first agent to run a first subtest of the at least two subtests (Page 1, ¶ 0012, lines 4-10 & Page 3, ¶ 0031), and

when a second subtest of the at least two subtests is defined to run on a second test session, the second subtest invokes a second test session servlet running on a second agent to thread the second test session (Page 8, ¶ 0081, lines 6-8),

sends a second subtest description, including test parameters for the second subtest and the dynamic data, to the second test session servlet, the second test session invoking the second agent to run the second subtest (Page 8, ¶ 0085, lines 10-15), and

receives second subtest results and the dynamic data from the second test session servlet (Page 8, ¶ 0051, lines 3-6).

the first test session servlet receiving subtest results from the first test session and sending subtest results from all subtests and the dynamic data back to the caller (Page 9, ¶ 0087, lines 5-10).

As to claim 6, Boudnik discloses the apparatus according to claim 5, wherein:

each test session servlet threads multiple test sessions that run in parallel (Page 3, ¶ 0034, lines 8-13).

As to claim 7, Boudnik discloses the apparatus according to claim 5, wherein:

each test session has an associated data store comprising a dynamic data store and a fixed data store; and the dynamic data is stored in the dynamic data store and the parameters and the subtest results are stored in the fixed data store (Page 3, ¶ 0033, lines 8-16 & Page 4, ¶ 0050).

As to claim 9, Boudnik discloses an apparatus, comprising:

an agent on a network (Page 4, ¶ 0038, lines 1-3); and

a first test session servlet running on the agent, receiving a test description in a predetermined format over the network from a caller, the test description including at least one predefined subtest, dynamic data, and predefined test parameters, threading a first test session that invokes the agent to run the at least one subtest to test the network, receiving subtest results from the first test session, and sending the subtest results from the at least one subtest and the dynamic data back to the caller (Page 1, ¶ 0012, lines 4-10 & Page 3, ¶ 0031 & Page 9, ¶ 0087, lines 5-10).

As to claim 10, Boudnik discloses the apparatus according to claim 9, wherein:

the at least one subtest comprises at least first and second subtests, and the second subtest is defined to run on a second test session (Page 6, ¶ 0064, lines 6-8); and

the second subtest sends a second subtest description, including test parameters for the second subtest and the dynamic data, to the second test session, to run the second subtest to test the network, and receives second subtest results and the dynamic data (Page 8, ¶ 0081, lines 6-8 & Page 8, ¶ 0085, lines 10-15).

As to claim 11, Boudnik discloses the apparatus according to claim 10, wherein:

each test session servlet threads multiple test sessions that run in parallel (Page 3, ¶ 0034, lines 8-13).

As to claim 12, Boudnik discloses the apparatus according to claim 9, wherein the agent comprises:

a computer (Page 3, ¶ 0033, lines 6-8).

As to claim 15, Boudnik discloses the apparatus according to claim 9, wherein:

the agent is one of a plurality of agents connected to the network, the plurality of agents respectively running a plurality of test session servlets (Page 3, ¶ 0033, lines 6-8 & ¶ 0034, lines 8-13); and

the caller is not one of the plurality of agents (Figure 1.108).

As to claim 16, Boudnik discloses the apparatus according to claim 9, wherein:

execution of the at least one subtest is not scheduled through a centralized agent scheduler (Page 8, ¶ 0082).

As to claim 17, Boudnik discloses the apparatus according to claim 9, wherein:

the first test session has an associated data store comprising a dynamic data store and a fixed data store; and the dynamic data is stored in the dynamic data store and the parameters and the subtest results are stored in the fixed data store (Page 3, ¶ 0033, lines 8-16 & Page 4, ¶ 0050).

As to claim 18, Boudnik discloses the apparatus according to claim 10, wherein the second subtest:

invokes a second test session servlet running on a second agent on the network to thread the second test session (Page 8, ¶ 0081, lines 6-8),

sends the second subtest description to the second test session??, which invokes the second agent to run the second subtest (Page 8, ¶ 0085, lines 10-15), and

receives second subtest results and the dynamic data from the second test session servlet (Page 8, ¶ 0051, lines 3-6).

As to claim 19, Boudnik discloses the apparatus according to claim 18, wherein:

each test session has an associated data store comprising a dynamic data store and a fixed data store (Page 9, ¶ 0087, lines 5-10); and

the dynamic data is stored in the dynamic data store and the parameters and the subtest results are stored in the fixed data store (Page 3, ¶ 0033, lines 8-16 & Page 4, ¶ 0050).

As to claim 20, Boudnik discloses an apparatus, comprising:

an agent (Page 4, ¶ 0038, lines 1-3); and

a test session servlet running on the agent, receiving a test from a caller, threading a test session that invokes the agent to run the test, receiving test results from the test session, and sending the test results back to the caller (Page 1, ¶ 0012, lines 4-10 & Page 3, ¶ 0031 & Page 9, ¶ 0087, lines 5-10).

As to claim 21, Boudnik discloses a method comprising:

receiving a test description in a predetermined format over a network from a caller, the test description including at least one predefined subtest, dynamic data, and predefined test parameters (Page 1, ¶ 0012, lines 4-10);

threading a test session that invokes an agent on the network to run the at least one subtest to test the network (Page 3, ¶ 0034, lines 8-13); and

sending results from the at least one subtest and the dynamic data back to the caller (Page 9, ¶ 0087, lines 5-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boudnik taken in view of Fraenkel (2003/0065986).

As to claims 8 and 14, Boudnik discloses wherein the predetermined format of the test description is a predefined XML (Page 4, ¶ 0050). Bundnik fails to disclose where the predefined XML schema is in one of an HTTP post and HTTPS post.

Fraenkel discloses a system wherein agents monitor and report various performance parameters associated with a network (Abstract, lines 3-5). Fraenkel does disclose wherein the predefined XML schema is in one of an HTTP post and HTTPS post (Page 10, ¶ 0119, lines 1-6).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Boudnik's XML schema to that of Fraenkel's HTTP post. A person of ordinary skill in the art would have been motivated to make the

modification because by using HTTP post requests the request may also include a data submission which would allow for verification points that specify expected responses (Fraenkel: Page 7, ¶ 0086, lines 11-16).

Allowable Subject Matter

Claim 13 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/11/2006 have been fully considered but they are not persuasive. Applicant states on page 8, "But it is unclear what the Examiner asserts corresponds to the claimed dynamic data. Boudnik discloses hash tables (e.g., initial parameters tables 604), but the communication is only one way. That is, the communication goes to the test agent process, but not back to the system controller 108."

Examiner respectfully disagrees. The agent launcher interface includes pattern parameters and initial parameters (dynamic data), the first agent process then sends a test execution request to the system controller having resource attribute requirements as set for the by the pattern parameters (Page 8, ¶ 0084, lines 1-2 & ¶0085, lines 1-4).

Applicant states on page 9, "Further, regarding claim 16, which recites: "...wherein execution of the at least one subtest is not scheduled through a centralized agent scheduler," Applicant respectfully submits that neither discloses nor suggest such a feature, since every request in Boudnik goes through the JINI Look up service 104 to find a suitable test system."

Examiner respectfully disagrees. Boudnik discloses wherein the first UDS application executes until it completes or until it requires another application to be launched, by continuing with operation 712 (Page 8, ¶ 0082, lines 3-7). In operation 712, a request is sent via the agent launcher interface to the second UDS application (Page 8, ¶ 0083, lines 1-2).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Ehne whose telephone number is (571)-272-2471. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.